

Serial No.: 10/674,428
Atty. Docket No.: P69160US0

REMARKS

The Final Office Action mailed April 18, 2006, has been carefully reviewed and Applicants request reconsideration and allowance of the application or, at a minimum, withdrawal of the final status. In support of this request and in view of pending claims 1-20, Applicants provide the following remarks.

In the previous Final Action mailed October 31, 2005, the Examiner rejected claims 1 and 10 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,589,221 to Olsen et al. ("the '221 patent") and also rejected claims 1 and 10 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,780,172 to Olsen et al. ("the '172 patent").

To clarify the present invention as being patentably distinct from the '221 patent and the '172 patent, Applicants filed an RCE and an Amendment on January 31, 2006 (hereinafter "the January Amendment").

To briefly summarize, the claimed invention is directed to a collecting bag for human body wastes having a bag member formed by first and second film blanks and a longitudinally extending discharge portion that extends between two end sections

Serial No.: 10/674,428
Atty. Docket No.: P69160US0

of the film blanks to a distal end. The second film blank is longer than the first film blank, with the additional length thereof forming an extension that extends beyond a distal edge of the first film blank. A discharge opening is formed between the extension and the distal edge of the first film blank. A first plate member made of a relatively stiff material lacking in suppleness in the thickness direction is positioned on the first film blank adjacent the first film blank distal edge, and a second plate member also made of a relatively stiff material lacking in suppleness in the thickness direction is positioned on the extension of the second film blank adjacent the discharge opening. When folding the discharge portion, the distal edge of the first plate member acts as a pivot, and a stretching effect is created on the second film blank to effectively seal the discharge opening with substantially no deformation of the plate members in the thickness direction.

Prior to the January Amendment, the plate members were defined as being "semi-rigid" or "made of a semi-rigid material". The dimension to which this "semi-rigid" characteristic referred was not specified.

In the January Amendment, the composition of the plate members was clarified, with such plates being defined in claims 1

Serial No.: 10/674,428
Atty. Docket No.: P69160US0

and 10 as being made or formed of "a relatively stiff material lacking in suppleness in the thickness direction". Hence, the stiffness of the plate material, which previously could have referred to a lengthwise or longitudinal stiffness, was explicitly defined by the January Amendment as being with respect to the thickness of the plate, i.e., to the compressibility of the material.

In making the first Action after the RCE final, the Examiner stated that claim 1 in each of the '221 and '172 patents recites plates or seal members "having greater rigidity than said film blanks", which is true. However, the Examiner goes on to state that this means that the seal members are "relatively stiff" and "lacking in suppleness in a thickness direction". This conclusion does not follow.

Firstly, the fact that the seal members have greater rigidity than the film blanks does not require that the seal members be "relatively stiff". The film blanks are made of thin, flexible plastic sheeting (see column 3, lines 4-5), having a bendability which can be compared with that of a plastic baggie material. Defining another component as having greater rigidity than a plastic baggie does not require that such other component

Serial No.: 10/674,428
Atty. Docket No.: P69160US0

be "relatively stiff". A paper bag would have greater rigidity than a plastic baggie.

Secondly, and more significantly, is the further conclusion reached by the Examiner that because the seal members in the '221 and '172 patents have greater rigidity than the film blanks, then they are "lacking in suppleness in the thickness direction". This goes well beyond what can be drawn from the "greater rigidity" statement, even if there were no other indications of the nature of the seal members, which is not the case. To the contrary, the seal members are further defined within claim 1 of the '221 patent and claim 1 of the '172 patent as being "resilient" and "compressibly resilient", respectively. That these definitions refer to resilience and compressibility in the thickness direction is clear from Figure 7 in both patents, as well as column 3, lines 47-57, and column 4, lines 19-28, which define the "resilient seal member" as a compressible material *such as foam*, i.e., clearly a material that is supple in the thickness direction.

Thirdly, Applicants point out that the terms "rigid" and "compressible" are not mutually exclusive, as is also clear from the '221 and '172 patents. The rigidity of a component may well, and often does, refer to its resistance to bending, i.e., a

Serial No.: 10/674,428
Atty. Docket No.: P69160US0

longitudinal stiffness. Such a "relatively rigid" component may, at the same time, be compressible in its thickness. A firm pillow, for example, can be quite resistant to bending so as to be "relatively stiff" while yet retaining its compressive qualities in the thickness direction when laid flat to receive the sleeper's head.

Finally, the greater rigidity of the seal members in claim 1 of each of the '221 and '172 patents has to refer to longitudinal rigidity. Particularly, the seal members have to have greater rigidity, *longitudinally* speaking, than the film blanks in order to secure proper closure of the bag as simply folding a material as flexible as the film blanks could not effect a reliable seal. But to say that longitudinal rigidity necessarily *partners* with lack of suppleness in the thickness direction is incorrect as already pointed out in the example of the firm pillow. As a converse example, the highly flexible film blanks are certainly not rigid longitudinally but for all practical purposes they do lack suppleness or compressibility in the thickness direction.

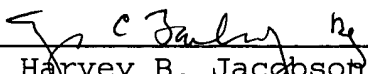
For at least the foregoing reasons, the limitations introduced in the January Amendment distinguish claims 1 and 10 over the '221 and '172 patents. Therefore, because the cited art

Serial No.: 10/674,428
Atty. Docket No.: P69160US0

does not teach or suggest a seal member that lacks suppleness in the thickness direction, claims 1 and 10 were not properly subject to rejection on the grounds and art of record, making a final rejection premature. Accordingly, Applicants respectfully request allowance of the pending claims or, at a minimum, withdrawal of the finality of the Action mailed April 18, 2006, and reopening of prosecution on the merits.

Should the Examiner have any questions or comments, the Examiner is cordially invited to telephone the undersigned attorney so that the present application can receive an early Notice of Allowance.

Respectfully submitted,
JACOBSON HOLMAN PLLC

By  No 40,495
for Harvey B. Jacobson, Jr.
Reg. No. 20,851

400 Seventh Street, NW
Washington, D.C. 20004-2201
Telephone: (202) 638-6666
Date: September 18, 2006
HBJ:SCB